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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 \*, ) CASE NO. CV\*-AHM(\*)  
12 ) ORDER REGARDING SETTLEMENT  
13 ) CONFERENCE BEFORE THIS COURT  
14 Plaintiff(s), ) Settlement Conference Date:  
15 v. ) Time: p.m.  
16 , et al., )  
17 )  
18 Defendant(s). )

19 **PLEASE READ THIS ORDER AND LOCAL RULE 16-14.4 CAREFULLY**

20 The Court has agreed to conduct the settlement conference in this matter. The  
21 Court has a keen interest in helping the parties achieve settlement. To facilitate the  
22 settlement conference, the Court hereby orders as follows:

23 **1. Settlement Conference Date.** [The parties should contact the Clerk of the Court  
24 to arrange a mutually agreeable date for the settlement conference to take place.] OR  
25 [The Court hereby schedules this case for a Mandatory Settlement Conference at  
26 \_\_\_\_\_.]

27 **2. Confidentiality.** Pursuant to Local Rule 16-14.8, all settlement proceedings shall  
28 be confidential and no statement made therein shall be admissible in any proceeding in

1 the case, unless the parties otherwise agree. No part of a settlement proceeding shall be  
2 reported or otherwise recorded without the consent of the parties except for any  
3 memorialization of a settlement.

4 **3. Consultation with Clients Before Settlement Conference.** Before the settlement  
5 conference, the attorneys are directed to explore the parameters of possible settlement  
6 with their respective clients and insurance representatives. Counsel should disclose in  
7 writing, although not necessarily in formal, itemized budget form, the amount it will  
8 realistically cost to continue the case through trial and appeal. At the conference itself,  
9 counsel will be required to confirm that they have done so, and each party will be  
10 expected to discuss all economic and non-economic factors relevant to reaching a full  
11 and final settlement.

12 **4. Exchanging Settlement Offers Before Settlement Conference.** In order to  
13 provide the parties with a starting point for their settlement discussions with the Court,  
14 Plaintiff(s) shall advise Defendant(s) of the terms upon which Plaintiff(s) then is  
15 prepared to settle the case, in a letter delivered or faxed no later than seven (7) calendar  
16 days prior to the settlement conference. Within forty-eight (48) hours of receipt of  
17 Plaintiff(s)'s settlement offer, Defendant(s) shall respond to the same by letter delivered  
18 or faxed advising Plaintiff(s) of the terms upon which they are prepared to settle the case.  
19 Counsel shall bring copies of those letters to the settlement conference.

20 **5. Settlement Conference Statements.**

21 (a) Statements That Are Exchanged.

22 No later than three (3) court days prior to the settlement conference,  
23 the parties shall deliver directly to the Court's chambers their separate  
24 settlement conference statements and shall fax or personally deliver their  
25 statement to opposing counsel. The statement, which shall be brief and to  
26 the point and may not exceed 10 double-spaced pages, shall include (1) a  
27 succinct statement of the facts of the case, including claims and defenses  
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1 remaining to be tried and the party's position on each issue; (2) an itemized  
2 statement of the damages claimed, in non-conclusory form; and (3) a  
3 summary of the history of past settlement discussions and offers and  
4 demands, including the most recent settlement offers exchanged pursuant  
5 to paragraph 4 of this Order. The statements shall also disclose the parties'  
6 positions about non-monetary terms that they may seek (or oppose).  
7 Depending on the case, such statements should include (but are not  
8 necessarily limited to): the form and scope of releases -- *e.g.*, general and/or  
9 specific; waiver of California Civil Code § 1542; releases of and/or  
10 covenants not to sue third parties who either are not participants in the  
11 settlement conference or are not even parties in the lawsuit, but whose  
12 interests could affect the negotiating parties' ability to settle;  
13 indemnifications against claims of other parties; whether there should be a  
14 confidentiality provision; whether there should be recitals of non-admission  
15 of fault or liability; whether each settling party is to pay his, her or its own  
16 costs and attorneys' fees; and any other provision which is likely to be the  
17 subject of negotiation. Each side should cite reported decisions that they  
18 think support their position as to the amount (if any) of damages (including  
19 punitive damages), and each side may attach a copy of published  
20 summaries of comparable cases taken from publications that contain the  
21 terms and amounts of settlements or verdicts. Unless absolutely essential  
22 to inform the Court of key considerations, please do not attach other items,  
23 such as exhibits or transcript excerpts; the purpose of the statement is to  
24 enable the Court to become familiar with the issues, not to try the case.  
25 Accordingly, do not include discussions of the legal principles affecting the  
26 substantive claims and defenses.

1 (b) Confidential Statement.

2 Pursuant to Local Rule 16-14.5, each party shall also prepare a  
3 Confidential Addendum to the Settlement Conference Statement, which  
4 shall also be delivered to chambers but *shall not be served upon the other*  
5 *parties*. The Confidential Addendum shall contain a forthright, honest  
6 statement of the terms on which the case realistically can be settled; the  
7 approximate amount of fees and costs expended to date; an estimate of the  
8 fees and costs to be expended for future discovery, pretrial and trial; and  
9 any additional information the party wishes to impart to the judge  
10 confidentially. The Court relies on the Confidential Statement to ascertain  
11 the terms that the parties are really prepared to accept.

12 (c) Exceptions.

13 Sometimes the foregoing requirements may be unnecessary -- *e.g.*,  
14 if there is only one relatively narrow or discrete issue that divides the  
15 parties, after they have reached agreement on all, or virtually all, other  
16 material terms. In such case, the parties' settlement conference statements  
17 and addenda should focus on the "sticking point" issue and provide the  
18 Court the background or context necessary to help break the impasse.

19 (d) Consequences of Non-Compliance

20 Failure to timely deliver a Settlement Conference Statement and  
21 Confidential Addendum will likely result in sanctions being imposed.

22 **6. Persons to be Present at Settlement Conference.** All persons whose consent is  
23 necessary to conclude settlement shall be present personally. This means the individual  
24 with the authority to say "yes," not just "no." As an exception, out-of-district parties,  
25 or agents empowered to settle may be available by telephone, provided they are  
26 absolutely committed to remaining available at the telephone (regardless of the hour)  
27 until released by the Court and further provided that a written request for their  
28 participation by telephone is submitted to and approved by the Court in advance of the

1 conference. (WARNING: The Court is not always inclined to routinely permit such  
2 telephonic participation.)

3 The plaintiff's representative must have full and final authority, in the  
4 representative's sole discretion, to authorize dismissal of the case with prejudice, or to  
5 accept a settlement amount recommended by the settlement judge down to the  
6 defendant's last offer made prior to the settlement conference. The defendant's  
7 representative must have final settlement authority to commit the defendant to pay, in  
8 the representative's sole discretion, a settlement amount recommended by the settlement  
9 judge up to the plaintiff's prayer (excluding punitive damage prayers), or up to the  
10 plaintiff's last demand made prior to the settlement conference, whichever is lower.

11 Counsel appearing without their clients and/or the person or persons whose  
12 presence is required to achieve settlement (such as insurance representatives) will cause  
13 the settlement conference to be canceled and rescheduled, *regardless of whether counsel*  
14 *purportedly has been given settlement authority*. (This will not result if the Court  
15 granted prior authorization for the client to participate telephonically.) The  
16 noncomplying party, attorney, or both, may be assessed the costs and expenses incurred  
17 by other parties as a result of such cancellation and rescheduling.

18 If a settlement proposal must be presented to a board or committee, the attendance  
19 of at least one sitting and knowledgeable member of the Board (preferably the  
20 Chairperson) is *absolutely required*, unless the entity commits absolutely to the  
21 discretionary authority of another representative.

22 In lawsuits involving the United States or any of its agencies, the Assistant U.S.  
23 Attorney in charge of the case must appear with the full measure of settlement authority  
24 provided by his or her superiors within the United States Attorneys' Office.

25 Any insurance company that is a party to the case or is contractually required to  
26 defend or to pay damages assessed within policy limits, must have a settlement  
27 representative present at the conference. Such representative must have final settlement  
28 authority to commit the company to pay, in the representative's sole discretion, an

1 amount recommended by the settlement judge within the policy limits. The purpose of  
2 this requirement is to have an insurance representative present who can settle the  
3 outstanding claim or claims during the course of the conference without consulting a  
4 superior. An insurance representative authorized to pay, in his or her sole discretion, up  
5 to the plaintiff's last demand made prior to the settlement conference will also satisfy  
6 this requirement. Counsel of record will be responsible for timely advising any involved  
7 non-party insurance company of the requirements of this Order.

8 **7. Conduct of Settlement Conference.** The Court may, in its discretion, converse  
9 with the lawyers, the parties, the insurance representatives, or any one of them outside  
10 of the hearing of the others. The comments of the Court during such separate sessions  
11 are not to be used by counsel in settlement negotiations with opposing counsel. This is  
12 a necessary requirement in order to avoid intentional or unintentional misquotation of  
13 the Court's comments. Violation of this policy may mislead the adverse party and  
14 therefore hinder settlement.

15 At the commencement of the settlement conference, each party through counsel  
16 may be required to make an oral presentation (not to exceed 10 minutes) of the relevant  
17 facts *and* law, in the presence of all parties and counsel.

18 If settlement between any or all parties is reached as a result of the Settlement  
19 Conference, the Court will enter the settlement terms on the record at the end of the  
20 conference and the parties will be expected to assent to those terms, at which point the  
21 settlement will be final and binding.

22 All papers submitted for the Settlement Conference will either be returned to the  
23 parties or destroyed by the Court after the settlement proceedings are concluded, unless  
24 the parties otherwise agree.

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1 The Court thanks the parties and their counsel for their anticipated cooperation in  
2 carrying out these requirements.

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4 IT IS SO ORDERED.

5 Dated: \_\_\_\_\_  
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7 A. HOWARD MATZ  
8 United States District Judge  
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